

U.S. Department of Labor

Office of Administrative Law Judges
36 E. 7th St., Suite 2525
Cincinnati, Ohio 45202

(513) 684-3252
(513) 684-6108 (FAX)



Issue Date: 15 April 2005

Case No.: 2003-BLA-0207

In the Matter of:

TRACEY BEGLEY
Claimant

v.

SHAMROCK COAL CO., INC.
Employer:

and

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
Party-in-Interest

APPEARANCES:

Edmond Collett, Esq.
For the Claimant

John H. Baird, Esq.
For the Employer

BEFORE: JOSEPH E. KANE,
Administrative Law Judge

DECISION AND ORDER – DENYING BENEFITS

This proceeding arises from a claim for benefits under Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. § 901 *et seq.* (the Act). Benefits under the Act are awarded to coal miners who are totally disabled due to pneumoconiosis. Pneumoconiosis, commonly known as black lung, is a chronic dust disease of the lungs arising from coal mine employment. 20 C.F.R. § 718.201(a) (2001).

Mr. Tracey Begley attended the formal hearing held December 17, 2003 in London, Kentucky. I afforded both parties the opportunity to offer testimony, question witnesses, and to introduce evidence. Pursuant to an agreement of the parties, the transcript of the deposition of Dr. Lawrence Repsher was submitted post-hearing and is hereby entered into evidence as

Employer's Exhibit 9 and an x-ray reading of a film dated March 8, 2003 by Dr. J. Wiot is hereby entered into evidence as Employer's Exhibit 10¹. In addition, Claimant submitted an Agreed Custody Decree which is entered into evidence as Claimant's Exhibit 4 and a copy of his marriage certificate which is entered into evidence as Claimant's Exhibit 5. The record is now closed. I base the following Findings of Fact and Conclusions of Law upon my analysis of the entire record, arguments of the parties, and applicable regulations, statutes, and case law. Although perhaps not specifically mentioned in this decision, each exhibit and argument of the parties has been carefully reviewed and thoughtfully considered. While the contents of certain medical evidence may appear inconsistent with the conclusions reached herein, the appraisal of such evidence has been conducted in conformity with the quality standards of the regulations.

The Act's implementing regulations are located in Title 20 of the Code of Federal Regulations, and section numbers cited in the decision exclusively pertain to that title.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Procedural History

Claimant filed the instant subsequent claim for benefits on March 12, 2001. (DX 1). The District Director denied benefits under the instant claim stating that Claimant failed to show:

1. That he has pneumoconiosis as defined by the Act and the regulations;
2. That his pneumoconiosis arose out of coal mine employment;
3. That he is totally disabled due to pneumoconiosis. (DX 29).

Failure to establish any one of these elements will result in denial of the claim. *Hall v. Director, OWCP*, 2 BLR 1-1998 (1980).

Factual Background

Claimant was born on September 9, 1966 and completed the 12th grade. (DX 1, Tr. 11-12). He married Vickie Collins on May 31, 2003 (Tr. 11, CX 5). In addition, Claimant testified at the hearing that he shares joint custody for his son, Tristen Everett Dewayne Begley, who was born on September 25, 1996, with his son's mother, Brandy Lewis (Tr. 12, CX 4). Claimant last worked in coal mine employment on January 27, 1997 when he injured his back while at work (Tr. 14). He has had two back surgeries since his injury in 1997. Claimant testified he began smoking cigarettes at the age of 14 or 15 and he continues to smoke a half pack of cigarettes each day (Tr. 12).

During his employment, Claimant worked running a miner, operating a shuttle car, operating a roof bolter and doing repair work on underground machinery. Claimant's work was all in underground coal mine employment (Tr 13). Claimant testified he is short of breath on walking

¹ DX indicates Director's Exhibits; EX indicates Employer's Exhibits; CX indicates Claimant's Exhibits; and TR indicates the transcript of the hearing held on December 17, 2003.

and climbing steps. In addition, he testified he has problems sleeping due to his breathing problems (Tr. 15). He applied for Social Security Disability for his back injury, but that claim is still pending. Claimant has received workers' compensation benefits for total disability for his back injury (Tr 15).

Contested Issues

The parties contest the following issues regarding this claim:

1. Whether the Claimant has pneumoconiosis as defined by the Act and the regulations;
2. Whether Claimant's pneumoconiosis, if present, arose out of coal mine employment;
and
3. Whether Claimant is totally disabled due to pneumoconiosis.

At the hearing, the Employer agreed Claimant has established eleven years and four months of coal mine employment. However, an earlier statement from the employer stated Claimant worked beginning on October 28, 1985 until January 29, 1998. That statement indicates Claimant was employed for twelve years and three months. This finding is supported by Claimant's Social Security Administration Earnings Statement (DX 17, 4). I find, therefore, Claimant has established twelve years and three months of coal mine employment.

Medical Evidence

Medical evidence submitted with a claim for benefits under the Act is subject to the requirement that it must be in "substantial compliance" with the applicable regulations' criteria for the development of medical evidence. *See*, 20 CFR §§ 718.101 to 718.107. The regulations address the criteria for chest x-rays, pulmonary function tests, physicians' reports, arterial blood gas studies, autopsies, biopsies and "other medical evidence." *Id.* "Substantial compliance" with the applicable regulations entitles medical evidence to probative weight as valid evidence.

Secondly, medical evidence must comply with the limitations placed upon the development of medical evidence. 20 CFR §725.414². The regulations provide that claimants are limited to submitting no more than two chest x-rays, two pulmonary function tests, two arterial blood gas studies, one autopsy report, one biopsy report of each biopsy and two medical reports as affirmative proof of their entitlement to benefits under the Act. § 718.414(a)(2)(i). Any chest x-ray interpretations, pulmonary function test results, arterial blood gas study results, autopsy reports, biopsy reports and physician opinions that appear in one single medical report must comply individually with the evidentiary limitations. *Id.* In rebuttal to evidence submitted by an opposing party, a claimant may introduce no more than one physician's interpretation of each chest x-ray, pulmonary function test, or arterial blood gas study. § 725.414(a)(2)(ii). Likewise, the employer is subject to identical limitations on affirmative and rebuttal evidence. §725.414(a)(3)(i-iii).

² Although the parties stated at the hearing that this claim was an "old regulations" claim, I note that this claim was filed on March 12, 2001. Accordingly, the "new regulations" are applicable to this claim filed after January 19, 2001.

A. X-ray reports

Exhibit	Date of X-ray	Physician/Qualifications	Interpretation
DX 10	01-31-02	Simpao	1/0 p, p
DX 11	01-31-02	Sargent, BCR/B	Quality reading only – quality 1
DX 26	01-31-02	Hayes, BCR/B	Completely negative
DX 25	06-25-02	Dahhan, B	Completely negative
CX 1	03-08-03	Baker, B	1/0 p, s
EX 10	03-08-03	Wiot, BCR/B	Completely negative
EX 2	09-24-03	Repsher, B	No pneumoconiosis

B. Pulmonary Function Studies

Exh/Date	Physician	Age/Height	FEV-1	FVC	MVV	FEV-1 / FVC	Tracings	Comments
DX 9 01-31-02	Simpao	35/72"	4.29	5.27	145	81%	yes	Good cooperation
DX 25 06-25-02	Dahhan	35/178 cm	4.22	5.08	100	83%	yes	Good cooperation
CX 1 03-08-03	Baker	36/72.25"	3.88	4.95	---	78%	yes	Fair cooperation
EX 2	Repsher	37/72"	4.15	5.04	149	82%	yes	Good

In addition, Dr. M. Vuskovich, a pulmonary specialist, reviewed the tracings of the January 31, 2002 and March 8, 2003 pulmonary function studies and stated they were valid studies. Dr. Vuskovich also stated that as of the date of these studies, based on the results of the studies, Claimant had no evidence of an obstructive or restrictive disease and he would be able to perform his usual coal mine employment (EX 4, 6).

C. Blood Gas Studies

Exhibit	Date	Physician	pCO ₂	pO ₂	Resting/ Exercise	Comments
DX 8	01-31-02	Simpao	43.8	82.5	Resting	
DX 25	06-25-02	Dahhan	34.1	80.6	Resting	
CX 1	03-08-03	Baker	36	77	Resting	
EX 2	09-24-03	Repsher	38.2	87.1	Resting	

C. Narrative Medical Evidence

Dr. Simpao examined Claimant on January 31, 2002 and reported a coal mine employment history from October, 1985 through January, 1997. In addition, Dr. Simpao noted Claimant was currently smoking cigarettes and had been since 1975, about 1/2 pack a day. Dr. Simpao stated Claimant's lungs were symmetrical on inspection with the tactile fremitus increased right over left on palpation. On percussion, Dr. Simpao reported increased resonance of the upper chest and axillary areas with crepitation and wheeze on inspiration and expiration on

auscultation. Dr. Simpao reported coal worker's pneumoconiosis, 1/0 on chest x-ray and he stated Claimant's results on pulmonary function study, blood gas study and electrocardiogram testing are normal. Dr. Simpao diagnosed coal worker's pneumoconiosis, 1/0, based on Claimant's coal mine employment history, coal dust exposure and chest x-ray findings. Dr. Simpao stated Claimant had a mild impairment due to the diagnosed coal worker's pneumoconiosis, and he concluded Claimant could not perform his usual coal mine employment. Dr. Simpao stated this conclusion was based on the chest x-ray changes, Claimant's symptoms and findings on physical examination (DX 7).

Dr. A. Dahhan, a pulmonary specialist, examined Claimant on June 25, 2002 and reported good air entry to both lungs with no crepitation, rhonchi or wheezes. Dr. Dahhan also reported electrocardiogram testing was normal and carboxyhemoglobin testing indicated smoking of a pack of cigarettes daily. The blood gas study and pulmonary function study results were normal. Finally, Dr. Dahhan reported chest x-ray was negative for pneumoconiosis, category 0/0. Dr. Dahhan also reviewed the medical records. Dr. Dahhan concluded: 1) there is insufficient objective data to justify a diagnosis of coal worker's pneumoconiosis based on the normal clinical examination findings, the normal results on pulmonary function study and blood gas study and the negative chest x-ray film; 2) there is no evidence of a pulmonary impairment and/or a disability based on the normal clinical and physiological parameters of the respiratory system; 3) from a respiratory standpoint, Claimant has the capacity to do his previous coal mine employment; 4) even if coal worker's pneumoconiosis is present, from a functional standpoint, Claimant has no evidence of any pulmonary disability and he retains the physiological capacity to do his last coal mine employment; and 5) Claimant has low back pain post lumbar disc surgery. Dr. Dahhan indicated this is a condition of the general public and not related to coal dust exposure or coal worker's pneumoconiosis (DX 25). Dr. Dahhan reiterated his written findings in an oral deposition taken on October 24, 2003 (EX 7).

On March 8, 2003, Dr. Baker, a pulmonary specialist, examined Claimant and reported normal findings on inspection, palpation and percussion of the chest and lungs. On auscultation, Dr. Baker reported bilateral expiratory wheezing. Dr. Baker also reported chest x-ray film showed pneumoconiosis, 1/0. On pulmonary function study, Dr. Baker reported Claimant's results were normal and he stated Claimant showed mild resting arterial hypoxemia on blood gas study. Dr. Baker diagnosed: 1) coal worker's pneumoconiosis, 1/0 based on Claimant's chest x-ray changes and coal dust exposure; 2) chronic bronchitis based on Claimant's history of cough, sputum production, and wheezing; and 3) hypoxemia based on Claimant's arterial pO₂ values. Dr. Baker further stated the etiology of Claimant's coal worker's pneumoconiosis was his coal dust exposure and the etiology of the chronic bronchitis and hypoxemia is Claimant's coal dust exposure and history of smoking cigarettes. Dr. Baker stated Claimant has a minimal impairment based on the presence of chronic bronchitis, decreased pO₂ values and coal worker's pneumoconiosis, 1/0 (CX 1).

Dr. L. Repsher, a pulmonary specialist, examined Claimant on September 24, 2003. Dr. Repsher noted a smoking history starting at age 19 or 20 and continuing, of about a half-pack a day. In addition, Dr. Repsher noted Claimant's coal mine employment history. He stated on physical examination, Claimant's breath sounds were normal with no prolongation of the expiratory phase. There were no rales, rhonchi or wheezes, even on force expiration. On chest x-ray,

Dr. Repsher reported no pneumoconiosis, category 0/0 and he reported normal results on pulmonary function study and blood gas study. Dr. Repsher also reported carboxyhemoglobin testing indicated Claimant smokes a pack a day of cigarettes each day. Dr. Repsher reviewed the medical evidence. He concluded: 1) there is no evidence of coal worker's pneumoconiosis; 2) there is no evidence of any pulmonary or respiratory disease or condition caused by or aggravated by coal mine employment; 3) Claimant has chronic low back pain; 4) Claimant is status post disc surgery in 1997 and 2001; 5) Claimant continues tobacco abuse; and 6) Claimant has hyperlipidemia. Dr. Repsher stated there is no coal worker's pneumoconiosis or any other respiratory or pulmonary condition present which is due to Claimant's coal mine employment based on the lack of chest x-ray changes of coal worker's pneumoconiosis, the normal results on pulmonary function study and blood gas study and the fact Claimant's other medical problems are not due to coal dust exposure. Dr. Repsher stated that Claimant does not have coal worker's pneumoconiosis and he does not have any respiratory impairment due to coal mine employment or coal dust exposure. Dr. Repsher finally concluded that Claimant retains the respiratory ability to perform the work of underground coal mine employment even if the presence of simple coal worker's pneumoconiosis were established (EX 2). Dr. Repsher reiterated his written findings in an oral deposition on November 25, 2003 (EX 9).

In addition to the narrative medical reports, the record includes hospital records from Central Baptist Hospital which indicate Claimant was treated for a herniated disc in February, 1997 and again in April, 1997 (DX 20). The records also include treatment records from Dr. M. Adams from October, 1997 through July, 2001 and from Dr. J. Gilbert from May through July, 2002. These treatment records are also focused on Claimant's on-going back problems related to his work injury and subsequent treatment (DX 19).

DISCUSSION AND APPLICABLE LAW

Pneumoconiosis and Causation

Section 718.202 provides four means by which pneumoconiosis may be established: by chest x-ray, a biopsy or autopsy, by presumption under §§ 718.304, 718.305 or 718.306, or if a physician exercising reasoned medical judgment, notwithstanding a negative chest x-ray, finds that the miner suffers from pneumoconiosis as defined in § 781.201³. 20 CFR §781.202(a). The regulatory provisions at 20 CFR §718.201 contain a definition of "pneumoconiosis" provided as follows:

(a) For the purpose of the Act, "pneumoconiosis" means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or "clinical", pneumoconiosis and statutory, or "legal", pneumoconiosis.

³ Only the x-ray evidence and the physicians' opinions are applicable under these facts. Section 718.202(a)(2) is inapplicable herein because there are no biopsy or autopsy results. Section 718.202(a)(3) provides that pneumoconiosis may be established if any one of the several presumptions is found to be applicable. In the instant case, Section 718.304 does not apply because there is no x-ray, biopsy, autopsy or other evidence of large opacities or massive lesions in the lungs. Section 718.305 is not applicable to claims filed after January 1, 1982. Section 718.306 is applicable only in a survivor's claim filed prior to June 30, 1982.

- (1) Clinical Pneumoconiosis. "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconiosis, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.
- (2) Legal Pneumoconiosis. "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

Section 718.201(a).

It is within the administrative law judge's discretion to determine whether a physician's conclusions regarding pneumoconiosis are adequately supported by documentation. *Lucostic v. United States Steel Corp*, 8 BLR 1-46, 1-47 (1985). "An Administrative Law Judge may properly consider objective data offered as documentation and credit those opinions that are adequately supported by such data over those that are not." *See King v. Consolidation Coal Co.*, 8 BLR 1-262, 1-265 (1985).

X-ray Evidence

Under Section 718.202(a)(1), a finding of pneumoconiosis may be based on x-ray evidence. The submitted x-rays do not support a finding of pneumoconiosis. Dr. Simpao provided one positive interpretation of the January 31, 2002 x-ray film. However, that film was read negative by Dr. Hayes, a Board-certified radiologist and B-reader. I may permissibly accord greatest weight to a dually-qualified reader over the interpretation of Dr. Simpao who is not Board-certified in Radiology or a B-reader. Consequently, this x-ray does not support a finding of pneumoconiosis. While Dr. Baker, a B-reader, found the March 8, 2003 x-ray film positive for pneumoconiosis, his reading is countered by the negative reading of that x-ray film by Dr. Wiot, a Board-certified radiologist and B-reader. I find, however, that Dr. Wiot's negative reading is well supported by the negative readings by Dr. Dahhan, a B-reader, of the June 25, 2002 x-ray film and by Dr. Repsher, a B-reader, of the September 24, 2003 x-ray film. Accordingly, I find the preponderance of negative readings of the three most recent x-ray films outweigh Dr. Baker's positive reading. Thus, I find the negative readings of record outweigh the positive readings. Therefore, pneumoconiosis has not been established under §718.202(a)(1).

Medical Opinion

Section 718.202(a)(4) provides the fourth and final way for a claimant to prove that he has pneumoconiosis. Under Section 718.202(a)(4), a claimant may establish the existence of the disease if a physician exercising reasoned medical judgment, notwithstanding a negative x-ray, finds that he suffers from pneumoconiosis. Although the x-ray evidence is negative for pneumoconiosis, a physician's reasoned opinion might support the presence of the disease if it is supported by adequate rationale besides a positive x-ray interpretation. *See Trumbo v. Reading*

Anthracite Co., 17 BLR 1-85, 1-89 (1993); *Taylor v. Director, OWCP*, 1-22, 1-24 (1986). The weight given to a medical opinion will be in proportion to its documented and well-reasoned conclusions.

A “documented” opinion is one that sets forth the clinical findings, observations, facts and other data on which the physician based the diagnosis. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). A report may be adequately documented if it is based on items such as a physical examination, symptoms and patient’s history. See *Hoffman v. B & G Construction Co.*, 8 BLR 1-65 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984); *Buffalo v. Director, OWCP*, 6 BLR 1-1164, 1-1166 (1984); *Gomola v. Manor Mining and Contracting Corp.*, 2/ BLR 1-130 (1979).

A “reasoned” opinion is one in which the underlying documentation and data are adequate to support the physician’s conclusions. See *Fields, supra*. The determination that a medical opinion is “reasoned” and “documented” is for the Court to determine. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*).

Dr. Simpao opined Claimant had pneumoconiosis based on his x-ray reading and Claimant’s history of coal dust exposure. Similarly, Dr. Baker concluded Claimant had pneumoconiosis based on the chest x-ray and history of coal dust exposure. He additionally attributed Claimant’s bronchitis and hypoxemia to coal dust exposure in part and in part to Claimant’s history of and continued habit of cigarette smoking. In contrast, both Dr. Dahhan and Dr. Repsher concluded Claimant does not have pneumoconiosis based on negative chest x-ray readings, normal results on pulmonary testing and normal findings on clinical examination.

On consideration of all of the medical reports, I find Dr. Repsher’s and Dr. Dahhan’s opinions to be most persuasive. These physicians note pulmonary testing, as well as the chest x-ray readings, in support of their diagnoses. In addition, their opinions are consistent with the probative chest x-ray evidence of record. These physicians also reviewed the medical record and, thus, included a consideration of Claimant’s treatment as well as the findings on examination and testing. In addition, these physicians both conducted carboxyhemoglobin testing indicating the miner’s smoking habit was a pack a day rather than the half-pack a day the miner stated. Thus, these physicians considered a more complete picture of the miner’s medical history and treatment. In addition, they based their opinions on a more complete consideration of Claimant’s current status regarding his smoking history and results on pulmonary testing as well as on chest x-rays. I find these more complete, comprehensive, and better supported medical opinion reports of Drs. Repsher and Dahhan outweigh the contradictory reports of Drs. Simpao and Baker. Therefore, I find Claimant has not established the presence of pneumoconiosis under the provisions of Section 718.202(a)(4).

I have considered all the evidence under Section 718.202(a) and I find the probative negative x-ray reports and the persuasive medical opinion reports of Drs. Repsher and Dahhan outweigh the contrary evidence of record. Weighing all the evidence together, I find the Claimant has not established the existence of coal worker's pneumoconiosis.

Total Disability

The determination of the existence of a totally disabling respiratory or pulmonary impairment shall be made under the provisions of Section 718.204. A claimant shall be considered totally disabled if the irrebuttable presumption of Section 718.304 applies to his claim. 20 C.F.R. § 718.204(b)(1). If, as in this case, the irrebuttable presumption does not apply, a miner shall be considered totally disabled if he is prevented from performing his usual coal mine work or com-parable and gainful work. In the absence of contrary probative evidence, evidence which meets one of the Section 718.204(b)(2) standards shall establish the claimant's total disability. The regulation at §718.204(b)(2) provides the following criteria to be applied in determining total disability: 1) pulmonary function studies, 2) arterial blood gas tests, 3) a cor pulmonale diag-nosis; and, 4) a reasoned medical opinion concluding total disability. Under this section, I must first evaluate the evidence under each subsection and then weigh all of the probative evidence together, both like and unlike evidence, to determine whether claimant has established total respiratory disability by a preponderance of the evidence. *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1987).

Under Sections 718.204(b)(2)(i) and (b)(2)(ii), total disability may be established with qualifying pulmonary function tests or arterial blood gas studies. All ventilatory studies of record, both pre-bronchodilator and post-bronchodilator, must be weighed. *Strake v. Ziegler Coal Co.* 3 BLR 1-136 (1981). To be qualifying, the FEV-1 as well as the FVC, MVV or FEV-1/FVC ratio, must equal or fall below the applicable table values. *Tischler v. Director, OWCP*, 6 BLR 1-1086 (1984). Claimant's values on all the pulmonary function studies and blood gas studies of record are non-qualifying. I find, therefore, Claimant has not established total disability by the pulmonary function study or blood gas study evidence of record.

Because there is no medical evidence of cor pulmonale in the record, I find Claimant failed to establish total disability with medical evidence of cor pulmonale under the provisions of subsection 718.204(b)(2)(iii).

Medical Opinions

The remaining means of establishing a totally disabling respiratory or pulmonary impairment under Section 718.204(b)(2) is with a reasoned medical opinion which concludes total disability is present, if the opinion is based on medically acceptable clinical and laboratory diagnostic techniques. A claimant must demonstrate that his respiratory or pulmonary condition prevents him from engaging in his "usual" coal mine employment or comparable and gainful employment". 20 C.F.R. §718.204(b)(2)(iv).

The physicians' reports are set forth above. In summary, Dr. Simpao stated Claimant would be unable to perform his usual coal mine employment, Dr. Baker stated Claimant has a minimal impairment; however, he did not discuss whether or not this impairment would prevent Claimant from performing his usual coal mine employment. Dr. Dahhan and Dr. Repsher both concluded Claimant has no respiratory impairment which would prevent him from performing his usual coal mine employment. The opinions of Drs. Repsher and Dahhan are well supported by all of the pulmonary test results of record which are non-qualifying. In addition, the opinions

of Drs. Repsher and Dahhan are well supported by the review of the pulmonary test results by Dr. Vuskovich who agreed they established Claimant was capable of performing his usual coal mine employment. In contrast, Dr. Baker did not clearly conclude whether or not Claimant could perform his usual coal mine employment from a respiratory standpoint. Dr. Simpao's conclusions are in contrast to the objective test results included in his own report and Dr. Simpao included no discussion as to the basis of his finding of total disability in light of the test results he reported. While Dr. Simpao did state his opinion of disability was based on Claimant's symptoms and examination findings, he did not discuss these in any detail to explain why these findings were more persuasive than the more objective non-qualifying test results included with his report. Under these circumstances, I find the opinions of Drs. Repsher and Dahhan better documented and better reasoned. Based on these more reliable opinions, I find Claimant has not established total disability by the probative medical opinion reports of record under the provisions of subsection 718.204(b)(2)(iv).

Upon consideration of all of the evidence of record, Claimant has not established total disability by pulmonary function study, blood gas study, by the presence of cor pulmonale or by medical opinion reports. I find, therefore, he has not established total disability under the provisions of Section 718.204(b). Furthermore, based on the more persuasive reports of Drs. Repsher and Dahhan, Claimant has not established total disability due to pneumoconiosis under the provisions of subsection 718.204(c). Accordingly, I find Claimant has not established total disability due to pneumoconiosis under Section 718.204.

Entitlement

Based on the findings in this case, none of the conditions of entitlement have been met. Claimant has not established the presence of pneumoconiosis, that such pneumoconiosis arose out of coal mine employment or total disability due to pneumoconiosis. Therefore, Mr. Tracey Begley's claim for benefits under the Act shall be denied.

Attorney's Fees

The award of attorney's fees, under the Act, is permitted only in cases in which the claimant is found to be entitled to the receipt of benefits. Since benefits are not awarded in this case, the Act prohibits the charging of any fee to the claimant for the representation services rendered to him in pursuit of the claim.

ORDER

It is ordered that the claim of Tracey Bagley for benefits under the Black Lung Benefits Act is hereby DENIED.

A

JOSEPH E. KANE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 20 C.F.R. § 725.481, any party dissatisfied with this Decision and Order may appeal it to the Benefits Review Board within thirty days from the date of this decision by filing a Notice of Appeal with the Benefits Review Board at P.O. Box 37601, Washington D.C. 20013-7601. This decision shall be final thirty days after the filing of this decision with the district director unless appeal proceedings are instituted. 20 C.F.R. § 725.479. A copy of this Notice of Appeal must also be served on Donald S. Shire, Associate Solicitor for Black Lung Benefits, 200 Constitution Avenue, N.W., Room N-2117, Washington, D.C. 20210.